

## TESTA, HURWITZ &amp; THIBEAULT, LLP

ATTORNEYS AT LAW

OFFICE (617) 248-7000

125 HIGH STREET  
BOSTON, MASSACHUSETTS 02110-2704

FAX (617) 248-7100

Direct Dial (617) 248-7510

E-Mail [hurwitz@thl.com](mailto:hurwitz@thl.com)

August 20, 2002

Terence A. Dixon, Esq.  
Dechert, Price & Rhoads  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103-2793

RE: Zone Perfect

Dear Terry:

I write once again to alert you to continued use by Zone Perfect of Dr. Sears's name in connection with sales of nutrition bars, protein powder, and related advertising.

Specifically, Dr. Sears recently was made aware of the sales of Zone Perfect protein powder and continuing sales of Zone Perfect bars, both bearing his name. (See enclosed copies.) As I have indicated in the past, the continuing unauthorized use of Dr. Sears's name and misleading statements of association with products with which he is not associated is of great concern to our client. Most troubling of all is that some of these food items appear to have been manufactured in 2002, well beyond any date on which Zone Perfect was authorized to use Dr. Sears's name. Such use must stop immediately.

It also troubles me greatly that we have not received a response to our earlier letters dated May 10, 2002 and June 14, 2002 raising the same and similar issues. We need to hear from you immediately with clear assurances that your client's unlawful activities have stopped and that Zone Perfect has notified in writing all of its customers, vendors, and other sellers of its products that they no longer should sell, offer to sell, or advertise for sale any Zone Perfect products bearing Dr. Sears's name.

From everything we observe, Zone Perfect continues to reap substantial financial benefits from the unlawful use of Dr. Sears's name.

Sincerely,

  
Stephen A. Hurwitz

encls.

cc: Thomas E. Neely, Esq. (w/encls.)  
Barry D. Sears, Ph.D.



